

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

In the Matter of R.K., et. al
on behalf of those similarly situated,

Plaintiffs,

v.

Case No. 3:21-cv-00725
Judges Crenshaw/Frensley

GOVERNOR BILL LEE, et. al.

Defendants.

**PLAINTIFFS' MOTION TO REQUIRE THE PRESENCE OF DECISION-MAKERS AT
MEDIATION OR, IN THE ALTERNATIVE, TO REQUIRE DECISION-MAKERS TO
APPROVE OR REJECT ANY TENTATIVE SETTLEMENT WITHIN TEN (10) DAYS
OF THE MEDIATION**

COME NOW Plaintiff R.K. et al. and file this Motion to Require the Presence of Decision-Makers at Mediation or, in the alternative, to Require Decision-Makers to Approve or Reject Any Tentative Settlement within Ten (10) Days of the Mediation. In support of their motion, Plaintiffs state as follows:

1. The Court recently ordered the parties to mediate the outstanding attorneys' fee dispute. (D.E. 142). Plaintiffs are filing this motion to ensure that a decision-maker is present for Defendant Lee at the mediation.

2. On July 18, 2022, after weeks of negotiations, Plaintiffs and Defendant Lee, through the Office of the Attorney General, reached a "tentative agreement" to resolve Plaintiffs' request for attorney's fees and costs. (ECF 127). This tentative agreement was subject to the approval of the officials designated in Tenn. Code Ann. § 20-13-103. (Id.).

2. In response to the notice of the tentative agreement being filed, the Court entered an Order terminating multiple motions, including Plaintiffs' motion for fees and costs, as moot. (ECF 128). The "approval process" then began.

3. Tenn. Code Ann. § 20-13-103 provides:

The attorney general and reporter, with the written approval of the governor and the comptroller of the treasury, may compromise and settle, insofar as the state is concerned, any civil litigation to which the state may be a party, upon such terms as in their opinion may seem to be in the best interest of the state, and may enter into such agreements in connection with the compromise and settlement as may be necessary to effectuate the purposes of this section.

4. On September 13, 2022, Defendant informed Plaintiffs that the tentative settlement, with its weeks of negotiation, had *not* been approved by the appropriate State of Tennessee constitutional officials. (ECF 129). No reason was given to the Plaintiffs, just that it was not approved.

5. Per the Court's recent Order, the parties are now in the process of determining a mediator to begin that settlement process again. The attorneys in this matter have worked well together and history demonstrates that they are capable of reaching a "resolution." However, as shown above, legal counsel for Governor Lee does not actually have the authority to settle this matter. Moreover, Tenn. Code Ann. § 20-13-103 does not have a deadline within which the approval process must take place.

6. To prevent a full day of mediation without a decision-maker being present for Defendant Lee, only to learn months later that decision-makers who did not attend the mediation *do not* approve it, Plaintiffs propose that the mediation be attended by persons with actual authority to settle. Plaintiffs would ask that the Court require that the designated constitutional officials under Tenn. Code Ann. § 20-13-103 be available via telephone on the day of the mediation for

purposes of approval or, in the alternative, that the Court require the process prescribed under Tenn. Code Ann. § 20-13-103 take place within ten (10) days of the mediation.

7. Without this relief, Plaintiffs may very well find themselves in the same place they were in this case more than a year ago today: spending considerable time and resources obtaining a proposed settlement only to have the actual decision makers who were not involved in the negotiations invalidate it months later.

CONCLUSION

To ensure that actual decision-makers are present at the mediation, Plaintiffs ask that the Court either order the officials necessary for approval of any settlement be available on the day of mediation via telephone or that those officials be required to carry out their duties under Tenn. Code Ann. § 20-13-103 within ten (10) days of the mediation.

Respectfully Submitted,

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that this Motion to Require the Presence of Decision-Makers at Mediation, or in the Alternative, to Require Decision-Makers to Reject or Approve of the Tentative Settlement Within Ten (10) Days of Mediation was served upon counsel of record at the contact information below for the Defendants, through the Court's ECF filing system on October 23, 2023.

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ATTORNEY FOR FRANKLIN SPECIAL SCHOOL DISTRICT

/s/ Bryce Ashby

CERTIFICATE OF CONSULTATION

I certify that on Friday, October 20, 2023, I conferred with counsel for Defendant Lee, Mr. Reed Smith, who advised the Defendant was not able to agree to the terms of this motion.

/s/ Bryce Ashby